IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

Crl.L.P..No. 881 of 2007()

ST.843/2006 of SPL.JUDICIAL FIRST CLASS MAGISTRATE COURT FOR TRIAL OF MARADU CASES, KOZHIKODE

.....

APPLICANT/COMPLAINANT:

M/S INTERIORS, REG.PARTNERSHIP FIRM,
REP.BY ITS MANAGING PARTNER, P.C.JOSEPH,
S/O.P.S.CHANDY, MERIDIAN MANSION, WAYANAD ROAD,
CALICUT-1, NADAKAV POLICE STATION LIMIT,
KOZHIKODE DISTRICT.

BY ADVS. SRI.P.K.RAMKUMAR
SMT.ANITHA RAMKUMAR

RESPONDENTS: ACCUSED & STATE

---

1. M/S.KOVILAKAM RESIDENCY,
REP.BY ITS MANAGING PARTNER, N.B.KRISHNA KURUP,
MINI BY PASS ROAD, GOVINDAPURAM, CALICUT-16.

2. N.B.KRISHNA KURUP,
KOVILAKAM RESIDENCY,
MINI BY PASS ROAD, GOVINDAPURAM, CALICUT-16.

3. N.B.RADHAKRISHNAN,
S/O.KRISHNA KURUP, PARTNER, KOVILIKAM RESIDENCY,
MINI BY PASS ROAD, GOVINDAPURAM, CALICUT-16.

4. STATE OF KERALA,
REPRESENTED BY THE PROSECUTOR,
AT HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. PUZHAKKARA MOHAMMED -R4

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 03/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. L.P. NO. 881 OF 2007

Dated this the 3rd day of October, 2007

O R D E R

This petition for special leave to appeal is filed against the judgment in S.T. No.843 of 2006 on the file of the Special Judicial First Class Magistrate's Court (Marad Cases), Kozhikode.

2. The case of the petitioner - complainant was that Ext.P3 cheque issued by the third accused - the third respondent herein, Partner of a firm, in discharge of an amount of Rs.75,000/- due from the first respondent - firm in connection with the interior furnishing work of a newly constructed building when presented to the bank for encashment was dishonoured on account of the stop payment memo issued by the account holder. After serving notice on the accused, the complaint was filed alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881. To prove the case against the accused, PWs.1 and 2 were examined and Exts.P1 5o P14 were produced. On the side of the defence, DW.1 was examined and Ext.D1 was produced. After closing the evidence of the complainant, the accused were questioned under Section 313 Cr.P.C. They denied the charge levelled against them. The third accused stated that he had not issued the cheque in his capacity

as Partner of the firm. After considering the evidence adduced in the case, the trial court found that the cheque was not drawn on the account maintained by the first accused - firm, but it was drawn on the account maintained by the third accused and that even the second accused - Managing Parter of the firm was not a signatory to the cheque in question. The trial court also found that as per the complaint, amount was due from the first accused. The trial court, therefore, found that the petitioner - complainant failed to prove that the first respondent committed offence punishable under Section 138 of the Negotiable Instruments Act. In the light of the above finding, the trial court, acquitted the accused.

3. It is the duty of the complainant to prove that the cheque in question was issued from the account maintained for and on behalf of the firm and signed by the Managing Partner or other partners of the firm. This having not been done, the finding of the trial court, which is based on evidence, requires no interference.

The Crl. Leave Petition is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

sp/

K. THANKAPPAN, J.

CRL.A. NO.

JUDGMENT

SEPTEMBER, 2007